



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Story et al.
Title: LICENSE MANAGEMENT FOR DIGITAL CONTENT
Application No.: 09/222,336
Filed: December 28, 1998
Group Art Unit: 3622
Confirmation No.: 3308
Examiner: Yehdega Retta

APPEAL BRIEF

Dear Sir:

Applicants (hereafter "appellant") hereby submit this Brief in triplicate in support of its appeal in accordance with the decision of the Pre-Appeal Review Panel. Appellant respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.



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I. REAL PARTY IN INTEREST

The present U.S. Patent application is assigned to Audible, Inc. of One Washington Park, Newark New Jersey 07102.

II. RELATED APPEALS AND INTERFERENCES

Appellant, appellant's legal representatives, and assignee of this patent application are unaware of any appeals or interferences related to this appeal which will directly affect, be directly affected by, or otherwise have a bearing on the Board's decision in this case.

III. STATUS OF THE CLAIMS

Claims 1-8, 10-18 and 20-36 are pending in the present application. Claims 9 and 19 have been canceled during prosecution. Claims 31-36 were added during prosecution. Claims 1-8, 10-18 and 20-36 were rejected in the Office Action mailed August 11, 2005 and are the subject of this appeal brief. Claims 34-36 are canceled herein to put the case in a better condition for appeal.

Claims 1-8, 10-18 and 20-36 stand rejected as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application

was filed, had possession of the claimed invention.

Claims 1-8, 10-18 and 20-36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,926,624 issued to Katz, et al. (hereinafter "Katz").

IV. STATUS OF AMENDMENTS

In response to the Office Action mailed August 11, 2005 rejecting claims 1-8, 10-18 and 20-36, appellant submitted a reply on February 6, 2006 which patentably distinguished the pending claims in this case over the prior art of record. No amendments were proposed in that reply. Appellant believe any amendments proposed in previous replies have been adopted. A copy of the pending claims is attached hereto as Appendix A for the convenience of the Examiner.

V. SUMMARY OF THE INVENTION

Aspects of the present invention provide one or more license management devices that manage licenses used in the playback of digital content. The license management devices create licenses having a cardinality. The cardinality of the license determines the number of playback devices that can be authorized by the license. The number of authorized playback devices is typically less than or equal to the cardinality of

the license, thereby controlling the distribution of content on a device by device basis, with the total number of authorized devices not to exceed a maximum number at any given time. In one embodiment, the license management device causes the license to be stored in the playback devices by using one or more digitally signed and/or encrypted commands. See, for example, appellant specification at page 5, lines 13-20.

The license may also be included in digital content that the license authorizes for playback. In one embodiment, the license management device may cause the license to be included in the digital content; however, content providers or other authorized agents may also cause the license to be included in the digital content. Playback devices having a license that matches a license included in the digital content are authorized to play the digital content. In one embodiment, a single license can be used to provide authorization to play digital content from multiple sources and/or multiple types of content. See, for example, appellant's specification, page 5, line 21 to page 6, line 1.

Playback devices may store multiple licenses, which allows playback devices to belong to multiple sets of playback devices authorized to playback various digital content. In one

embodiment, digital content files can contain multiple licenses to allow the content files to be shared by multiple sets of playback devices. In other words, a content file can be shared by different sets of users because the content contains multiple licenses. See, for example, appellant's specification page 6, lines 1-9.

In one embodiment, a server may be coupled to multiple playback devices, including hardware playback devices and players (e.g., software applications running on a computer system), by a network. Multiple hardware playback devices and players can be coupled to servers by a network. See, for example, specification at page 8, lines 6-10. One or more servers may operate as a license management device, which creates licenses and determines the cardinality of the licenses created. The cardinality component of the license determines the number of playback devices that are authorized by the license. Thus, the number of playback devices is limited to that specified by the cardinality. The license management device communicates with the playback devices and/or players via a network to enforce the cardinality restriction. See, for example, appellant's specification page 11, lines 10-18, page 12, line 16 to page 13, line 20, and Figure 5.

Licenses created by the license management device may be communicated to content providers. The content providers, in turn, may embed a copy of the license into digital content to be provided to the playback devices and/or players. See, for example, appellant's specification, page 11, lines 19-24. In one embodiment, a license may include a 32-bit group identifier. See page 12, lines 16-17. When a player or playback device receives digital content, the player or playback device checks to determine whether the license stored in the content matches the license stored by the player or playback device. If the licenses match, the payer or playback device is authorized for playback. See, for example, appellant's specification, page 12, lines 3-7.

Each playback device may store multiple licenses which can be added or removed according to various techniques. See specification at page 13 and Figure 6. The cardinality of each license can vary including, but not limited to, a fixed number, a variable number, or an unlimited number. See, for example, appellant's specification page 14, lines 14-16.

VI. ISSUES PRESENTED

1. Whether claims 1-8, 10-18 and 20-33 contain subject matter that is not described in appellant's specification in

such a way as to reasonably convey to one skill in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

2. Whether claims 1-8, 10-18 and 20-33 are anticipated by U.S. Patent No. 5,926,624 to Katz et al. (Katz).

VII. GROUPING OF CLAIMS

For purposes of this appeal brief:

Claims 1, 2, 4-8, 10-12, 14-18, 20-22, 24 and 28-33 comprise Claim Group I.

Claims 3, 13, 23 and 25-27 comprise Claim Group II.

VIII. ARGUMENT

A. REJECTION OF CLAIMS 1-8, 10-18 and 20-33 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH AS CONTAINING NEW MATTER IS IMPROPER BECAUSE THE SPECIFICATION AND THE ORIGINALLY FILED CLAIMS BOTH CLEARLY DESCRIBE A LICENSE COMPRISING A CARDINALITY

Claim Groups I and II

Claims 1-8, 10-18 and 20-33 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter that was not described in the specification in such a way as to convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. Appellant respectfully submits that the claims of

Claim Groups I and II are fully supported by an enabling written description in both the specification and the claims as originally filed.

The Final Office Action states, in the pertinent part, that:

Claims 1, 11, 21 and 31, recite "creating a first license comprising a first cardinality wherein the cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content".... The license does not comprise of cardinality according to applicant's disclosure.... Since the specification does not teach the "license comprising of cardinality", it is considered new matter.

See Final Office Action, pages 2-3.

However, appellant traverses the Examiner's position with respect to this rejection by pointing out that the specification provides explicit written support for this claim feature. In particular, appellant's specification, page 11, lines 10-11 explains that "In operation, license management device 510 creates a license having a cardinality."

Appellant respectfully submits that this portion of the specification constitutes word for word support for the claim feature alleged to be "new," with the exception of the use of the non-limiting inclusive word "having," which clearly provides support for the open ended transitional phrase "comprising" as set forth in the pending claims.

Moreover, appellant's specification, page 12, line 9 to page 13, line 20 explains that the license itself has a cardinality component, with the cardinality feature of each license being enforced by a licensing management device, which would not be possible if the license itself did not include a cardinality component. Further, appellant points out that the license is generated in response to a user request. Prior to that request, the cardinality of that license cannot be known, and thus the cardinality is generated as part of the license creation process.

As discussed in appellant's specification, license management device 510 may create a license which includes a cardinality component (numerical restriction) as part of the license creation process. License management device 510 may enforce this restriction by referring to the license, obtaining its cardinality value, and determining if a specified threshold is reached. One way this may be accomplished is by incrementing/decrementing a counter in the license management device until the threshold established by the license is reached. Because different licenses may have different cardinality values (thresholds), each license is created with its own cardinality component, which is referred to by license

management device 510, when managing that license. Unless a license is generated, there is no need to create or keep track of the cardinality component, which would have no purpose in a relative vacuum.

Thus, as can be seen from the above, clear written support for a "license comprising a cardinality" is indeed present in appellant's specification. Moreover, although written support is clearly found in multiple places in the specification, further additional written support is found in the originally filed claims, which are attached hereto as Exhibit B for the convenience of the Examiners.

As shown in Exhibit B, original claims 1, 11 and 21 clearly recite "creating a first license having a first cardinality." In addition, claims 2, 13 and 23 recite "creating a second license having a second cardinality," further providing for support appellant's position (because these originally filed claims constitute written description and themselves provide written support). Appellant will amend the specification to include this claim language, if the Examiners deem such an amendment necessary. *See, e.g.,* MPEP 608.01 (1). However, no new matter has been added as the Examiner contends. Accordingly, appellant respectfully requests that the rejection pursuant to 35 U.S.C. § 112, first

paragraph, be withdrawn.

**B. REJECTION OF CLAIMS 1-8, 10-18 and 20-33 UNDER 35
U.S.C. § 102(e) AS BEING ANTICIPATED BY U.S. PATENT NO.
5,926,624 IS IMPROPER BECAUSE THE REFERENCE IS NOT OFFERED
TO SHOW A LICENSE COMPRISING A CARDINALITY**

Claim Groups I and II

Claims 1-8, 10-18 and 20-36 stand rejected under 35
U.S.C. § 102(e), as clearly being anticipated by Katz et al.
U.S. Patent 5,926,624 (Katz). For the at least the reasons
set forth below, appellant respectfully traverses this
rejection.

The Examiner has repeatedly rejected appellant's pending
claims contending that Katz teaches all of the perceived
claimed features including, *inter alia*, a license with an
associated cardinality. Office Action, August 11, 2005 pages
3-6. The basis of the Examiner's rejection appears to fully
rely the on the assumption that the pending claims specify
(or should be interpreted as) a "cardinality associated with
the license."

However, appellant respectfully points out that this
assumption is incorrect. The claims currently pending in
this appeal do not specify "a cardinality associated with a
license," but rather specify "a license comprising a

cardinality." As established above, clear and ample written support for this feature can be found in appellant's specification. Despite the absence of the word "associated" in the pending claims, at some point during the examination process, it appears the Examiner has impermissibly changed (or interpreted) the terms of the actual pending claims with respect to cardinality to include the word "associated." This term does not appear in the claims currently pending in this appeal¹, and therefore cannot be properly used as a basis for rejection.

Because the Examiner has impermissibly inserted words into and/or changed the meaning of the claims on appeal, the rejection with respect to Katz must therefore fail on this basis alone (*i.e.*, because the Examiner's rejection is based on a flawed interpretation and/or is based on terms not present in the pending claims. Thus, the pending rejection is, in fact, not based on the claims actually pending in this appeal). Accordingly, appellant's request that the rejection under 35 U.S.C. § 102(e) be withdrawn².

¹ Although appellant's specification does provide support in the written description that the cardinality may merely be associated with the license, such a claim is not pending in this case, and thus is not at issue in this appeal. Accordingly, the merits of any such claim are not addressed herein. However, appellant reserves the right to pursue such claims in a subsequent continuation or divisional application.

² Accordingly, there is no need for, nor does appellant address herein, whether Katz teaches a cardinality associated with a license.

Nonetheless, appellant's present discussion below explaining why the pending claims, as presented or properly interpreted (e.g., a license comprising a cardinality) are allowable over Katz. Although the Examiner found these arguments persuasive in the past, appellant reiterates them here for convenience.

Katz discloses a digital library and a mobile playback device that can be used to play digital content from the digital library. See, for example, Fig. 2. Katz discloses that playback devices can be members of one or more groups and include a group ID. See Katz, col. 12, lines 39-67. However, the Group ID of Katz is merely a number that identifies a group. The Group ID does not indicate a number of playback devices in the group nor does it provide any restriction on the content a particular device may play. Thus, Katz fails to show or suggest a license comprising a cardinality as specified in appellant's pending claims.


For at least the foregoing reasons, appellant submits that pending claims, including claims 1-8, 10-18 and 20-33 are not anticipated by Katz. Appellant therefore requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

IX. CONCLUSION

Appellant respectfully submits that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

Respectfully submitted,

Date: 4/24/07



Michael E. Shanahan
Attorney for Appellant
Reg. No. 43,914
Customer No. 21710
Brown Rudnick Berlack Israels LLP
Seven Times Square
New York, NY 10036
212-209-4978
212-209-4801

APPENDIX A: CLAIMS AS CURRENTLY PENDING

1. A method comprising:

creating a first license comprising a first cardinality, wherein a cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by and the cardinality to be enforced by a license management device;

transmitting information corresponding to the first license to a content provider from the license management device;

transmitting the first license to a first set of playback devices from the license management device, wherein the first set of playback devices is less than or equal to the first cardinality;

storing the first license in the first set of playback devices in response to a command from the license management device; and

determining whether playback of first digital audio content received from the content provider is authorized by comparing the first license with the first digital audio content having one or more embedded licenses by the first set of playback devices.

2. The method of claim 1 further comprising: storing the first license in second digital audio content; and

authorizing playback of the second digital audio content with the first set of playback devices.

3. The method of claim 1 further comprising: creating a second license having a second cardinality, the license created by the license management device;

transmitting information corresponding to the second license to the content provider from the license management device;

transmitting the second license to a second set of playback devices from the license management device, wherein the second set of playback devices is determined

based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;

storing the second license in the second set of playback device in response to one or more commands from the license management device; and

determining whether playback of the second digital audio content received from the content provider is authorized by comparing the first license with the digital audio content having one or more embedded licenses by the second set of playback devices.

4. The method of claim 1 wherein the cardinality is fixed.
5. The method of claim 1 wherein the cardinality is variable.
6. The method of claim 1 wherein the cardinality is unlimited.
7. The method of claim 1 wherein at least one of the first set of playback devices comprises at least one hardware playback device.
8. The method of claim 1 wherein at least one of the first set of playback devices comprises at least one software player.
9. Canceled
10. The method of claim 1 wherein the first digital audio content further comprises video digital programming.
11. A machine-readable medium having stored thereon sequences of instructions that when executed one or more electronic systems to:
 - create a first license comprising a first cardinality, wherein a cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by and the cardinality to be enforced by a license management device;

transmit information corresponding to the first license to a content provider from the license management device;

transmit the first license to a first set of playback devices from the license management device, wherein the first set of playback devices is less than or equal to the first cardinality;

store the first license in the first set of playback devices in response to a command from the license management device; and

determine whether playback of first digital audio content received from the content provider is authorized by comparing the first license with the first digital audio content having one or more embedded licenses by the first set of playback devices.

12. The machine-readable medium of claim 11 further comprising sequences of instructions that when executed cause the one or more electronic systems to:

store the first license in second digital audio content; and

authorize playback of the second digital audio content with the first set of playback devices.

13. The machine-readable medium of claim 11 further comprising sequences of instructions that when executed cause the one or more electronic systems to:

create a second license having a second cardinality, the license created by the license management device;

transmit information corresponding to the second license to the content provider from the license management device;

transmit the second license to a second set of playback devices from the license management device, wherein the second set of playback devices is determined based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;

store the second license in the second set of playback device in response to one or more commands from the license management device; and

determine whether playback of the second digital audio content received from the content provider is authorized by comparing the first license with the digital audio content having one or more embedded licenses by the second set of playback devices.

14. The machine-readable medium of claim 11 wherein the cardinality is fixed.
15. The machine-readable medium of claim 11 wherein the cardinality is variable.
16. The machine-readable medium of claim 11 wherein the cardinality is unlimited.
17. The machine-readable medium of claim 11 wherein at least one of the first set of playback devices comprises at least one hardware playback device.
18. The machine-readable medium of claim 11 wherein at least one of the first set of playback devices comprises at least one software player.
19. Canceled
20. The machine-readable medium of claim 11 wherein the first digital audio content further comprises digital video programming.
21. An apparatus for digital license management, the apparatus comprising:
 - means for creating a first license comprising a first cardinality wherein a cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license created by and the cardinality to be enforced by a license management device;
 - means for transmitting information corresponding to the first license to a content provider from the license management device;
 - means for transmitting the first license to a first set of playback devices from the license management device, wherein the first set of playback devices is less than or equal to the first cardinality;

means for storing the first license in the first set of playback devices in response to a command from the license management device; and

means for determining whether playback of first digital audio content received from the content provider is authorized by comparing the first license with the first digital audio content having one or more embedded licenses by the first set of playback devices.

22. The apparatus of claim 21 further comprising:

means for storing the first license in second digital audio content; and

means for authorizing playback of the second digital audio content with the first set of playback devices.

23. The apparatus of claim 21 further comprising: means for creating a second license having a second cardinality, the license created by the license management device;

means for transmitting information corresponding to the second license to the content provider from the license management device;

means for transmitting the second license to a second set of playback devices from the license management device, wherein the second set of playback devices is determined based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;

means for storing the second license in the second set of playback device in response to one or more commands from the license management device; and

means for determining whether playback of the second digital audio content received from the content provider is authorized by comparing the first license with the digital audio content having one or more embedded licenses by the second set of playback devices.

24. A digital data signal embodied in a data communications medium shared among a plurality of network devices having a processor, the digital data signal comprising instructions that, when executed, cause the processor to provide digital audio programming, the digital data signal comprising A license comprising a first cardinality, wherein a cardinality indicates the number of playback devices that can be authorized for playback of associated digital audio content, the license having been created by and the cardinality to be enforced by a license management device, wherein a set of playback devices receive the digital data signal in response to one or more commands issued by the license management device and authorize playback of digital audio data if the license included in the computer data signal matches at least one license stored *in* the digital audio data.
25. The digital data signal of claim 24 wherein the cardinality is fixed.
26. The digital data signal of claim 24 wherein the cardinality is variable.
27. The digital data signal of claim 24 wherein the cardinality is unlimited.
28. The digital data signal of claim 24 wherein at least one of the first set of playback devices is a hardware playback device.
29. The digital data signal of claim 24 wherein at least one of the first set of playback devices is a software player.
30. The digital data signal of claim 24 wherein the first digital audio content further comprises digital video programming.
31. A method comprising: receiving a first license at a playback device, the playback device belonging to a first set of playback devices, the license comprising a first cardinality, wherein a cardinality indicating a number of playback devices that can be authorized for playback of digital content, and wherein the first set of playback devices is less than or equal to the first cardinality;

storing the first license in the playback device;
receiving first digital content, wherein information associated with the first license is embedded in the first digital content; and
determining whether playback of the received first digital content by the playback device is authorized by comparing the first license stored in the playback device with the first license information embedded in the first digital content.

32. The method of claim 31 further comprising:

receiving second digital content, wherein information associated with the first license is embedded in the second digital content; and

authorizing playback of the second digital audio content by the first playback device based on a match between the first license and the first license information embedded in the second digital content.

33. The method of claim 31 further comprising:

receiving a second license at the playback device, the license having a second cardinality, the playback device belonging to a second set of playback devices, wherein the second set of playback devices is determined based, at least in part, on the second cardinality;

storing the second license in the playback device;

receiving second digital content, wherein information associated with the second license is embedded in the second digital content; and

determining whether playback of the received second digital audio content by the playback device is authorized by comparing the second license with the second license information embedded in the second digital content.

34. Canceled

35. Canceled

36. Canceled

APPENDIX B: CLAIMS AS ORIGINALLY FILED

What is claimed is:

1. A method of managing digital content licenses, the method comprising:
creating a first license having a first cardinality, the license created by a license management device;
storing the first license in a first set of playback devices in response to a command from the license management device, wherein the first set of playback devices is determined based, at least in part, on the first cardinality;
storing the first license in first digital content; and
authorizing playback of the first digital content with the first set of playback devices.
2. The method of claim 1 further comprising:
storing the first license in second digital content; and
authorizing playback of the second digital content with the first set of playback devices.
3. The method of claim 1 further comprising:
creating a second license having a second cardinality, the license created by the license management device;
storing the second license in a second set of playback devices, wherein the second set of playback devices is determined based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;
storing the second license in second digital content;
authorizing playback of the second digital content with the second set of playback devices.

4. The method of claim 1 wherein the cardinality is fixed.
5. The method of claim 1 wherein the cardinality is variable.
6. The method of claim 1 wherein the cardinality is unlimited.
7. The method of claim 1 wherein at least one of the first set of playback devices is a hardware playback device.
8. The method of claim 1 wherein at least one of the first set of playback devices is a software player.
9. The method of claim 1 wherein the first digital content is audio digital programming.
10. The method of claim 1 wherein the first digital content is audio/visual digital programming.
11. A machine-readable medium having stored thereon sequences of instructions that when executed by one or more processors cause the one or more processors to:
 - create a first license with a license management device, the first license having a first cardinality;
 - store the first license in a first set of playback devices in response to a command from the license management device, wherein the first set of playback devices is determined based, at least in part, on the first cardinality;
 - store the first license in first digital content; and
 - authorize playback of the first digital content with the first set of playback devices.
12. The machine-readable medium of claim 11 further comprising sequences of instructions that when executed cause the one or more processors to:

store the first license in second digital content; and
authorize playback of the second digital content with the first set of playback devices.

13. The machine-readable medium of claim 11 further comprising sequences 2 of instructions that when executed cause the one or more processors to:

create a second license in the license management device, the second license having a second cardinality;

store the second license in a second set of playback devices, wherein the second set of playback devices is determined based, at least in part, on the second cardinality, and further wherein at least one playback device belongs to the first set and to the second set;
store the second license in second digital content;
authorize playback of the second digital content with the second set of playback devices.

14. The machine-readable medium of claim 11 wherein the cardinality is fixed.

15. The machine-readable medium of claim 11 wherein the cardinality is variable.

16. The machine-readable medium of claim 11 wherein the cardinality is unlimited.

17. The machine-readable medium of claim 11 wherein at least one of the first set of playback devices is a hardware playback device.

18. The machine-readable medium of claim 11 wherein at least one of the first set of playback devices is a software player.

19. The machine-readable medium of claim 11 wherein the first digital content is audio digital programming.

20. The machine-readable medium of claim 11 wherein the first digital content is audio/visual digital programming.

21. An apparatus for digital license management, the apparatus comprising:
means for creating a first license in a license management device, the first license having a first cardinality;
means for storing the first license in a first set of playback devices in response to a command from the license management device;
means for storing the first license in first digital content; and
means for authorizing playback of the first digital content with the first set of playback devices.
22. The apparatus of claim 21 further comprising:
means for storing the first license in second digital content; and
means for authorizing playback of the second digital content with the first set of playback devices.
23. The apparatus of claim 21 further comprising:
means for creating a second license in the license management device;
means for storing the second license in a second set of playback devices, wherein at least one playback device from the second set of playback devices is included in the first set of playback devices;
means for storing the second license in second digital content; and
means for authorizing playback of the second digital content with the second set of playback devices.